

IN THE IOWA DISTRICT COURT IN AND FOR DALLAS COUNTY

THE CITY OF WAUKEE, IOWA,

Plaintiff,

v.

KURT SCHADE

All Parties in Possession

1230 Warrior Lane

Waukee, Iowa 50263

and

LORI SCHADE

All Parties in Possession

1230 Warrior Lane

Waukee, Iowa 50263

Defendants.

CIVIL CITATION NO. WASMAC051058

ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANTS:

You are notified that a Civil Citation of a Municipal Infraction Based Upon Violations of the Ordinance of the City of Waukee, Iowa has been filed in the Office of the Clerk of Court in Dallas County, naming you as the Defendants in this action. A copy of the Civil Citation (and any documents filed with it) is attached to this Notice. The attorney of the Plaintiff is Steven P. Brick of BRICK GENTRY P.C., whose address is 6701 Westown Parkway, Suite 100, West Des Moines, Iowa 50266. That attorney's telephone number is (515) 274-1450; facsimile number (515) 274-1488.

You must serve a motion or answer within 20 days after the service of this Original Notice upon you and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for Dallas County, at the county courthouse in Adel, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the Citation.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

[SEAL]

Marsha McDermott

CLERK OF COURT
Dallas County Courthouse
801 Court Street
Adel, Iowa 50003

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

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Defendants.

CIVIL CITATION NO.

WASMAC 051058

CIVIL CITATION

MUNICIPAL INFRACTION

VIOLATION OF AN ORDINANCE OF THE
CITY OF WAUKEE

FILED
DALLAS COUNTY, IOWA
2012 JUN 20 PM 3:41
J. E. HARRIS, CLERK

YOU ARE HEREBY NOTIFIED THAT THE UNDERSIGNED CITY OF WAUKEE OFFICER, STATES THAT THE ABOVE NAMED DEFENDANT(S) DID VIOLATE CHAPTERS 301 AND 801 OF THE WAUKEE CODE OF ORDINANCES WITHIN THE CORPORATE LIMITS OF THE CITY OF WAUKEE, IOWA, AS FOLLOWS:

1. The Defendant(s) own or control property located at: 1230 Warrior Lane, Waukee, Iowa 50263.
2. The property is located within the City Limits of the City of Waukee and is zoned under the A-I zoning classification.
3. In July of 2007 a permit was sought by defendants for the construction of a "utility shed" on the property.
4. In April of 2009 defendants pursued a change to the A-1 zoning district to allow the operation of a small farm winery but abandoned the effort.
5. In July of 2009, defendant was sent notice that the mixed uses contemplated by

defendants were not allowed under the current zoning of the property, including, but not limited to the sale of wine on the premises.

6. In August of 2009, Defendants sought a review of the zoning ordinances related to the sale of wine on the premises.

7. In October of 2009, the Board of Adjustment determined that wine could not be sold on the premises.

8. Defendant filed a petition for Writ of Certiorari seeking judicial review of that determination.

9. The Iowa District Court in and for Dallas County Iowa in the case captioned Kurt H. Schade v Board of Adjustment for the City of Waukee, Iowa, Case No. CVCV035599 affirmed the decision of the Board of Adjustment finding the defendant cannot sell wine on the premises.

10. Defendant had not made arrangements for a final inspection of the “utility shed” when he completed his work on the same. Upon demand of the City, a recent inspection was undertaken and determined that the structure is not in compliance with several health, fire and safety requirements of the International Building code for such structures and a certificate of occupancy can not presently be issued for the “utility shed”.

11. Upon information and belief, the defendants appear to be holding out the building they characterized to City Staff as a “utility shed” as a place for the public to hold events such as weddings and events, for charge. The building does not meet the more stringent health, safety and fire regulations for such a structure and use.

12. AS TO THE PROPERTY LOCATED AT 1230 Warrior Lane, Waukee, Iowa

50263, on January 4, 2012 and continuing daily through the date of filing this Pleading with the Court, and on multiple other dates, Defendants:

i. Violated Chapters 222, 301 and 801 of the Waukee Code of Ordinances by using and/or occupying a building or structure on the property without a certificate of occupancy. The property under your control where the said violation is occurring is located at: 1230 Warrior Lane., Waukee, Iowa 50263.

ii. Violated chapters 222, 301 and 801 of the Waukee Code of Ordinances by maintaining outside parking that does not consist of impervious material in violation of the Waukee Code of Ordinances. The property under your control where the said violation is occurring is located at: 1230 Warrior Lane, Waukee, Iowa 50263.

iii. Violated Chapters 222, 301 and 801 of the Waukee Code of Ordinances by offering and selling wine on the property. The Defendant sought a Board of Adjustment determination that wine could be sold on the property. In October of 2009, the Board of Adjustment determined that wine could not be sold on the property. Defendant filed a writ of certiorari of that decision and the Iowa District Court in and for Dallas County, affirmed the decision of the Board of Adjustment. It is clearly established that wine cannot be sold on the property.

iv. Violated Chapter 222, 301 and 801 of the Waukee Code of Ordinances by offering and undertaking to hold events in commerce such as weddings and other events.

13. On or about April 26, 2012 Defendants were informed they must to correct and/or cease and desist the activities in violation of chapters 301 and 801 Waukee Code of Ordinances, however Defendants have failed to correct the violations as required by law and continue to

operate in blatant disregard of the requirements of the code. In fact, after that notice from the City, On or about May 5, 2012; May 27, 2012 and June 9, 2012 the defendants held events in commerce at the property at which the "utility shed" was occupied by a large number of people, wine was sold, and cars were parked on the grass.

14. Each day a violation is allowed to continue, or occurs, constitutes a separate offense.

THE CITY OF WAUKEE, AS PLAINTIFF, SEEKS THE FOLLOWING:

A. That Defendant(s) be assessed the maximum civil penalties pursuant to 364.22 Code of Iowa (2012), and the Waukee Code of Ordinances, for a municipal infraction for the First Offense and for each Repeat and Subsequent Offense, not to exceed a total of \$5,000;

B. That Defendant(s) be ordered to abate the violations and to bring the property into conformance with the Waukee Code of Ordinances;

C. That Defendant(s) be enjoined and restrained from violations of Chapters 222, 301 and 801 of the Waukee Code of Ordinances or be subject to appropriate contempt proceedings and additional civil penalties.

D. That the Defendant(s) be ordered to pay the costs of this action, including reasonable attorney fees, as allowed by law.

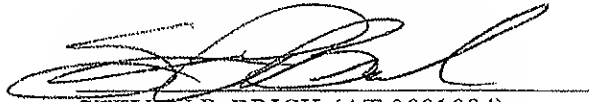
TO ANSWER THE CHARGES OF THIS CITATION DEFENDANT(S) MUST EACH FILE AN APPEARANCE AND ANSWER OF DEFENDANT IN THE COURT AT DALLAS COUNTY DISTRICT COURT, 801 COURT STREET, IN ADEL, IOWA 50003, WITHIN TWENTY (20) DAYS OF THE SERVICE OF THIS CIVIL CITATION UPON YOU.

UNLESS YOU APPEAR BEFORE THE COURT TO CONTEST THIS MATTER AT THE DALLAS COUNTY DISTRICT COURT, 1801 COURT STREET, IN ADEL, IOWA 50003, AT THE HEARING SET FOR THIS CAUSE, JUDGMENT WILL BE ENTERED AGAINST THE DEFENDANT(S) FOR THE RELIEF REQUESTED, FOR THE CIVIL PENALTY PLUS COURT COSTS AND AN ORDER TO REMEDY THE VIOLATION AND ENJOIN DEFENDANT(S) FROM VIOLATING THE ORDINANCE IN THE FUTURE.

FAILURE TO ANSWER OR APPEAR WITHOUT GOOD CAUSE WILL RESULT IN A JUDGMENT BEING ENTERED AGAINST THE DEFENDANT(S) FOR THE RELIEF REQUESTED, THE CIVIL PENALTY PLUS COURT COSTS AND AN ORDER TO REMEDY THE VIOLATION AND ENJOIN DEFENDANT(S) FROM VIOLATING THE ORDINANCE IN THE FUTURE.

CIVIL PENALTY MAY BE PAID BY MAKING PAYMENT OF THE AMOUNT REQUESTED TO THE CITY OF WAUKEE BY DELIVERING SAME TO CITY OF WAUKEE, CITY HALL, 230 W. HICKMAN ROAD, WAUKEE, IOWA 50263. AT ANY TIME PRIOR TO THE COURT APPEARANCE.

RESPECTFULLY SUBMITTED,



STEVEN P. BRICK (AT 0001084)

Brick Gentry P.C.

6701 Westown Parkway, Suite 100

West Des Moines, Iowa 50266

Telephone: (515) 274-1450

Fax: (515) 274-1488

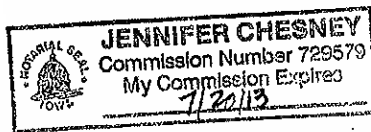
Email: steve.brick@brickgentrylaw.com

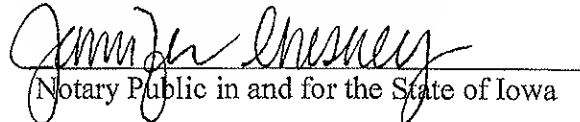
Attorney for Waukece and signed and issued at the direction of the Interim City Administrator

STATE OF IOWA ss :

DALLAS COUNTY

Subscribed, sworn to and acknowledged before me on this 19th day of June, 2012.




Notary Public in and for the State of Iowa

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 1-319-398-3920 ext. 200. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)